

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

Case Number: 1:12-cv-00257-JB-LFG

LARRY GOLDSTONE,
CLARENCE G. SIMMONS, III
and JANE E. STARRETT,

Defendants.

NOTICE OF SUPPLEMENTAL AUTHORITY

Pursuant to Local Rule of Civil Procedure 7.8(b) and in further opposition to the Motion to Dismiss of Jane Starrett, Plaintiff Securities and Exchange Commission submits this Notice of Supplemental Authority to raise with the Court a significant decision that has recently come to its attention.

SEC v. Familant, Civil Action No. 12-119 (JEB), 2012 WL 6600339, at ** 9-12 (D.D.C. Dec. 19, 2012), directly challenges the holding in *SEC v. Kelly*, 817 F.Supp.2d 340 (S.D.N.Y. 2011), the principal case upon which Ms. Starrett relies to argue that the Commission's scheme liability claim against her should be dismissed. *See* Defendant Jane Starrett's Reply in Support of Motion to Dismiss (Dkt 57) at 6; Defendant Jane Starrett's Response to the SEC's Surreply on the Issue of Alleged Scheme Liability (Dkt #66) at 3-5.

In the *Familant* decision, Judge Boasberg found that *Kelly* interprets scheme liability too narrowly and was incorrectly decided. *Familant*, at *9. Judge Boasberg holds that he "disagrees with its reasoning . . .," noting that "this Court cannot square the broad, sweeping language of

subsections (a) and (c) [of Rule 10b-5] . . . with the narrow window for ‘scheme liability’ left open by *Kelly*.” *Id.* The decision further explains that “[s]ubsections (a) and (c) of Rule 10b-5, in sum, use broad language, and the text of the Rule and the Supreme Court’s precedents offer no justification for limiting the natural reach of that language.” *Id.* at * 12.

The Commission has previously explained that it has alleged actions in furtherance of the scheme that are independent of any misstatement, and, accordingly, *Kelly* does not support dismissing the scheme allegations against Ms. Starrett. *See* Plaintiff’s Surreply to Defendant Jane Starrett’s Reply in Support of Motion to Dismiss (Dkt 63) at 9-10; *see also* Plaintiff’s Supplemental Brief in Opposition to Defendants’ Motions to Dismiss (Dkt #68) at 9. The *Familant* decision further demonstrates that Ms. Starrett’s reliance on *Kelly* is misplaced.

Dated: January 8, 2013

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CERTIFICATE OF SERVICE

I hereby certify that on January 8, 2013, the foregoing document was electronically filed with the Clerk of Court using the CM/ECF system that will send notification of such filing to all counsel of record.

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